4. Current Law: Tools for Mitigating Development Impacts

Concurrency requires local governments to deny proposed developments if they cause the level of service on local arterials to decrease below the minimum standard, unless a financial commitment is in place to accommodate the impacts of the developments within six years. One of the options local governments have to accommodate the impacts of development is to provide the transportation system improvements needed to maintain the level of service.

State law has numerous provisions for local governments to charge fees or assess mitigation to developers in order to fund the improvements needed for the development to meet concurrency requirements. These tools include: land dedication and voluntary agreements, mitigation under the State Environmental Policy Act (SEPA), Growth Management Act (GMA) impact fees, and Local Transportation Act impact fees which can be assessed by individual local governments or by a Transportation Benefit District. The Washington State Department of Transportation (WSDOT) can also mitigate land use impacts on the state transportation system by regulating access to its highways.

Land Dedication and Voluntary Agreements

The Washington State Constitution grants local governments the police powers that provide the basis for the regulation of the subdivision of land to promote public health, safety and general welfare.[1] Accordingly, state statute requires local governments to deny subdivision approval unless the proposed subdivision serves the public use and interest and makes appropriate provisions for public health, safety and general welfare.[2] Alternatively, cities and counties may impose conditions on subdivision permits that would address the deficiencies in the proposal that caused the denial. For example, local governments may require property owners to dedicate land or provide public improvements to serve the subdivision.[3] Local governments fully planning under the GMA are also allowed to condition subdivision approval on the payment of impact fees.[4]

POLICE AND SANITARY REGULATIONS: Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.

Washington State Constitution, Article XI Section 11

The law requires local governments to demonstrate that land dedications, payments in lieu of land dedications, and other fees or public improvements are "reasonably necessary as a direct result of the proposed development or plat."[5] The "reasonably necessary as a direct result" standard has been addressed in numerous court cases. The courts have held that permit conditions cannot be determined based on a fixed percentage set aside or a per-unit assessment based on the cumulative impact of all developments collectively. Rather, permit conditions must be based on an assessment of the impacts caused by a particular develop-

1. RCW 58.17.010
2. RCW 58.17.110
3. RCW 58.17.110(2)(b)
4. Ibid.
5. RCW 82.02.020

ment.[6] Also, if local governments require road improvements, they must carefully demonstrate that the automobile trips generated by a development results in a quantifiable increase of traffic on the particular lane of the road or intersection where improvements are required. In addition, local governments must document the improvements are needed as a direct result of the development and not because of a preexisting deficiency.[7] Further, local governments must show their proposed conditions of approval tend to solve, or at least alleviate, the identified problem. Therefore, when imposing conditions or exactions for future improvements, local governments must provide a reasonable basis for inferring the improvement will actually occur in the foreseeable future.[8]

Washington statutes also define the parameters under which local governments can enter into voluntary agreements with developers to make payments in lieu of land dedications or otherwise mitigate the impacts of their developments. The word 'voluntary' in this context means "the developer has the choice of either paying for those reasonably necessary costs which are directly attributable to the developer's project or losing preliminary plat approval."[9] Voluntary agreements are subject to the following provisions:

1. they cannot be used for off-site transportation improvements within an area covered by an adopted transportation program authorized by the Local Transportation Act;

2. the payments must be expended only to fund the capital improvements agreed upon by the parties to mitigate the identified, direct impact;

3. the payment must be expended within five years of collection; and

4. any payment not so expended must be refunded with interest, unless the delay is attributable to the developer.[10]

Additionally, when assessing a payment in lieu of land dedication, a city or county must determine, in a site-specific manner, the value of the land the developer could have been required to dedicate as a basis for the payment.[11] This rule does not apply to mitigation fees, which may be required as a condition of approval and do not have be in lieu of anything as long as they will mitigate a direct impact of the proposed subdivision.[12]

---

6. *Castle Homes and Development, Inc. v. The City of Brier, et al.,* 32243-5-I, Court of Appeals of Washington, Division One (August 22, 1994) and *Isla Verde International Holdings, Inc. et al. v. The City of Camas,* 69475-3, Supreme Court of Washington (July 11, 2002).
7. *Larry Cobb, et al. v. Snohomish County,* 24680-1-I, Court of Appeals of Washington, Division One (November 4, 1991), *The Benchmark Land Company v. The City of Battleground,* 70659-0, Supreme Court of Washington (July 11, 2002) and *E. Paul Detray and Land Ho, Inc. v. City of Lacey and North Thurston Public Schools,* 32498-9-II, Court of Appeals of Washington, Division Two (March 21, 2006).
8. *Unlimited v. Kitsap County, et al.,* 11308-2-II, Court of Appeals of Washington, Division II (March 4, 1998) and *Lance Burton v. Clark County,* 20372-3-II, Court of Appeals of Washington, Division Two (July 10, 1998).
9. *Larry Cobb, et al. v. Snohomish County,* 24680-1-I, Court of Appeals of Washington, Division One (November 4, 1991).
10. RCW 82.02.020
11. *Henderson Homes Inc., et al. v. The City of Bothell,* 59696-4, Supreme Court of Washington (July 21, 1994), *Trimen Development Company v. King County,* 59452-0, Supreme Court of Washington (July 21, 1994) and *Vintage Construction Company v. The City of Bothell,* 64773-9, Supreme Court of Washington (July 30, 1998).
12. *View Ridge Park Associates, et al. v. Mountlake Terrace,* 27951-3-I, Court of Appeals of Washington, Division One (October 19, 1992).

Beyond state statues and state court precedents, the authority of a local government to condition development approval is further restricted by the Fifth Amendment of the U.S. Constitution. The Fifth Amendment protects private property from being taken for public use without just compensation. In order to avoid a constitutional "takings" challenge, land use regulations, including development conditions, must substantially advance legitimate state interests and allow owners an economically viable use of their land.[13] Additionally, a permit condition issued in lieu of a building restriction or denial must demonstrate a nexus with the original purpose of the building restriction or denial.[14] Finally, permit conditions must be roughly proportional to the impact of the proposed development. Rough proportionality does not require a precise mathematical calculation, "but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development."[15]

Summary of Key Washington Cases Related to Development Exactions for Traffic Impacts:

Larry Cobb, et al. v. Snohomish County (1991). The county required a developer to enter into a voluntary agreement to mitigate traffic impacts to an intersection bordering the development. The intersection as a whole operated at LOS D but the traffic movements the subdivision contributed to operated at LOS C. The court ruled the county could not require mitigation because the development contributed traffic only to the portion of the intersection that operated at LOS C and their development code did not require impacts to LOS C intersections to be mitigated.

Castle Homes & Development v. City of Brier (1994). The city assessed the cumulative impact of all developments collectively and applied a proportionate share of the costs to individual developments based on the number of lots. The court ruled this was not allowed because it did not take into account the direct impact of each separate subdivision location and the differing street distribution impacts of each. For example, based on a traffic study, only eight percent of the traffic from Castle Homes would stay in the City for more than two blocks before it entered a neighboring city.

Lance Burton v. Clark County (1998). The county required a developer to build a road that would eventually connect to another road. The court disallowed this condition, asserting it did not solve the identified public problem because the record did not furnish a basis for inferring whether the connection would occur in the foreseeable future.

E. Paul Detray and Land Ho, Inc. v. City of Lacey et al. (2006). The court ruled that it is the city's burden to show that improvements needed are not due to a pre-existing deficiency. While the city did document the number of trips added as a result of the development, this was not sufficient to demonstrate a quantifiable increase in traffic. The city should have documented whether the increase was nominal or significant and how the traffic would somehow increase the need for widening an already deficient road. The court did allow the city to require the development to provide a turning lane because this improvement would specifically facilitate movement in and out of the development.

State Environmental Policy Act

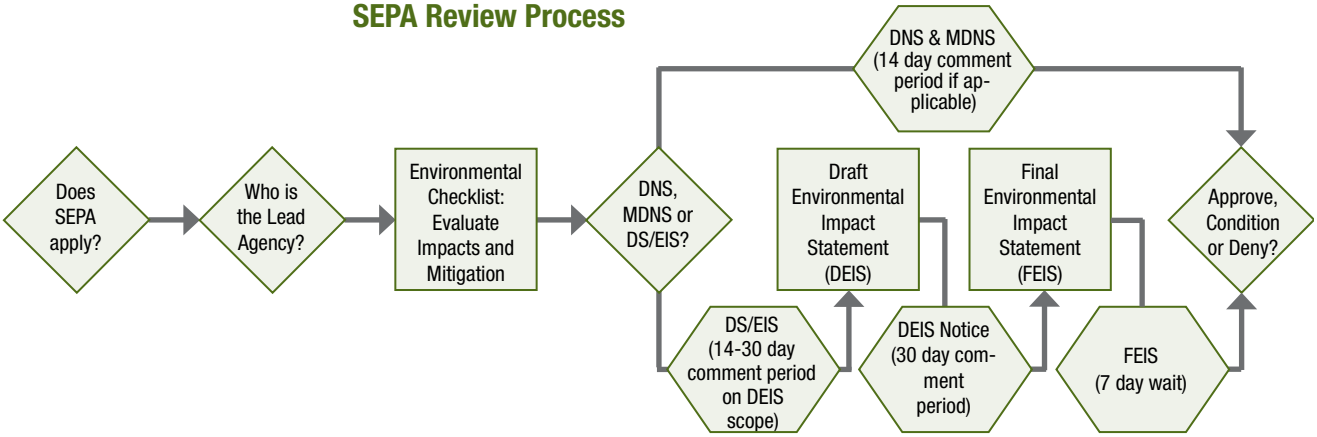
In the context of local land use planning and private development activity, the 1971 State Environmental Policy Act provides an additional mechanism for the mitigation of development impacts. It also gives the state an opportunity to voice concerns regarding the impact of local land use plans and regulations on state-owned transportation facilities.

The primary purpose of the SEPA process is to provide a venue for state and local governments to disclose and consider environmental impacts when making decisions. Additionally, SEPA gives state and local governments the substan-

13. *Agins V. Tiburon,* 447 U.S. 255, U.S. Supreme Court (June 10, 1980).
14. *Nollan v. California Coastal Commission,* 483 U.S. 825, U.S. Supreme Court, (June 26, 1987).
15. *Dolan v. City of Tigard,* 512 U.S. 374, U.S. Supreme Court (June 24, 1994).

tive authority to act on the basis of the impacts disclosed[16] by denying or imposing conditions on government actions.[17] The SEPA review process, as depicted below, seeks to determine through a series of informed decisions whether a proposed action would result in significant adverse environmental impacts, to identify reasonable measures to mitigate those impacts, and to determine whether those measures are sufficient.[18]

SEPA Review Process



The first step in the SEPA process is determining whether or not a review is required. The SEPA review process is required for all non-exempt government actions. Exempt government actions are described in the table below.

SEPA EXEMPTIONS	
Statutory RCW 43.21C	Specific exemptions defined by the legislature (e.g. annexations and incorporations).
Rule WAC 197-11-305	Exemptions (with some exceptions) of activities whose size or type are unlikely to cause a significant adverse impact (e.g. construction of less than four dwellings or commercial buildings with less than 4,000 ft^2 and less than 21 parking spaces).
Emergency RCW 43.21C.210	Exemptions granted when there is not time to complete an environmental review and the action is needed to avoid an imminent threat to public health or safety, public or private property, or to prevent serious environmental degradation.
Infill RCW 43.21C.229	Exemptions that can be established by cities and counties for new residential or mixed use development proposed to fill in an urban growth area whose density and intensity is lower than called for in the comprehensive plan.

SEPA applies to non-project actions such as the adoption of comprehensive plans and development regulations and project actions like new construction. Non-project SEPA review allows governments to consider the environmental impacts of "big picture" policy choices by conducting comprehensive analyses, address-

16. *The Polygon Corporation v. The City of Seattle, et al.*, 44536, Supreme Court of Washington (May 18, 1978).
17. RCW 43.21.C.060
18. RCW 58.17.110

ing cumulative impacts, and identifying possible alternatives and mitigation measures. SEPA review of project actions is intended to ensure that the action is consistent with local, state, and federal plans and regulations. SEPA review is also intended to address environmental impacts local land use laws could not anticipate.

The second step in reviewing a proposed action is identifying the SEPA-lead agency. The lead agency is responsible for complying with the review process, compiling and assessing environmental information, and making decisions. Local governments are typically the lead agency for their own legislative actions as well as permit decisions for private development projects within their boundaries. Therefore, the state's assessment of mitigation for most development projects is subject to the review and discretion of a local agency. The state can serve as the lead agency when a development project requires a state permit. Additionally, the state may assume lead agency status under some circumstances. For example, if a state agency with jurisdiction believes a proposed action requires more in-depth environmental analysis than the local agency has required, it can assume lead agency status and prepare an Environmental Impact Statement.[19]

The third step in the SEPA process is evaluation, which involves the completion of a standardized environmental checklist. The checklist solicits information about the proposal and its impact on a variety of environmental elements, including transportation. The transportation portion of the checklist requests information regarding:

- proposed accesses to public streets and highways
- available public transit services
- parking
- new public or private roads or streets planned
- use or location near water, rail, or air transportation
- number of vehicular trips per day generated by the completed project and timing of peak volumes
- proposed measures to reduce or control transportation impacts

Non-project actions are required to address how the proposal would be likely to increase demands on transportation and to propose measures to reduce or respond to such demands.

The potential impacts and mitigation measures identified in the environmental checklist are considered by the lead agency prior to taking the fourth step in the SEPA process, the issuance of a threshold determination. The threshold determination is a formal decision as to whether proposals are "major actions having a probable significant, adverse environmental impact."[20] The courts have interpreted this phrase to mean when "more than a moderate effect on the quality of the environment is a reasonable probability."[21] The lead agency should consider the physical setting of the action, the magnitude and duration of the impact, and cumulative impacts when making this decision.[22] The lead agency then issues a:

SEPA CHECKLIST ENVIRONMENTAL ELEMENTS:

» Earth
» Air
» Water
» Plants
» Animals
» Energy & Natural Resources
» Environmental Health
» Noise
» Land & Shoreline Use
» Housing
» Aesthetics
» Light & Glare
» Recreation
» Historic & Cultural Preservation
» Transportation
» Public Services

19. WAC 197-11-948
20. RCW 43.21C.031(1)
21. *Norway Hill Preservation and Protection Association v. King County Council, et al.*, 44015, Supreme Court of Washington (July 8, 1976).
22. WAC 197.11.330(3)

- DNS (Determination of Non-Significance) if the proposal has no probable significant adverse impacts[23],
- MDNS (Mitigated Determination of Non-Significance) if changes to the proposal or mitigation measures are agreed on that will reduce likely significant environmental impacts to a nonsignificant level[24], or
- DS/EIS (Determination of Significance/Environmental Impact Statement) if the proposal may have a probable significant adverse environmental impact that needs to be further evaluated in an Environmental Impact Statement.[25]

If challenged in court, threshold determinations are only reversed if clearly erroneous.[26] This legal standard of review gives substantial weight to the decision of the lead agency while allowing the courts to consider both the public policy and environmental values of SEPA.[27]

The different threshold determinations trigger different requirements for public and agency comment. All MDNS decisions and some DNS decisions (including all those involving another agency) require a 14-day public comment period and circulation to other agencies affected by the proposal.[28] If the lead agency issues a DS/EIS, the Draft Environmental Impact Statement requires a 14-30 day comment period on its scope[29] and a 30-45 day comment period on its content. It also requires broader circulation than a DNS.[30] Following these comment periods, the lead agency prepares and circulates a Final Environmental Impact Statement, waiting seven days prior to adoption. Comment periods allow the state an opportunity to ask local governments to consider denying or conditioning a development permit to avoid or mitigate specific adverse impacts to state-owned transportation facilities. Likewise, the state can request that local governments abandon, alter, or mitigate their land use policies or regulations to reduce adverse impacts on state-owned transportation facilities.

Any conditions placed on government actions or denials through SEPA must be based on policies and regulations previously adopted by the lead agency. In addition, mitigation conditions must be:

- based on specific adverse environmental impacts identified in SEPA environmental documents,
- stated in writing by the decision-maker, and
- reasonable and capable of being accomplished.[31]

Unlike other mitigation tools, SEPA statutes do not define a time frame for the use of mitigation fees.

SEPA SUBSTANTIVE AUTHORITY: Any governmental action may be conditioned or denied pursuant to this chapter: PROVIDED, That such conditions or denials shall be based upon policies identified by the appropriate governmental authority and incorporated into regulations, plans, or codes which are formally designated by the agency (or appropriate legislative body, in the case of local government) as possible bases for the exercise of authority pursuant to this chapter...Such action may be conditioned only to mitigate specific adverse environmental impacts which are identified in the environmental documents prepared under this chapter. These conditions shall be stated in writing by the decision maker. Mitigation measures shall be reasonable and capable of being accomplished. In order to deny a proposal under this chapter, an agency must find that: (1) The proposal would result in significant adverse impacts identified in a final or supplemental environmental impact statement prepared under this chapter; and (2) reasonable mitigation measures are insufficient to mitigate the identified impact.

RCW 43.21C.060

23. WAC 197.11.340
24. WAC 197.11.350
25. WAC 197.11.360
26. *Norway Hill Preservation and Protection Association v. King County Council, et al.,* 44015, Supreme Court of Washington (July 8, 1976).
27. *James R. Sisley, et al. v. San Juan County, et al.,* 44592, Supreme Court of Washington (September 22, 1977).
28. WAC 197.11.340(2)
29. WAC 197.11.408-410
30. WAC 197.11.455
31. RCW 43.21C.060

Before denying a proposal on SEPA grounds, "an agency must (1) specifically set forth potential adverse impacts that would result from implementation of the proposal, and (2) specifically set forth reasonable mitigation measures to counteract these impacts, or, if such measures do not exist, (3) specifically state why the impacts are unavoidable and development should not be allowed."[32] The courts have also asserted that the adverse impacts used as a basis for conditioning or denying government action must be proven, not speculative,[33] although no particular quantum of supporting data is mandated.[34]

The policies and goals of SEPA are "supplementary to those set forth in existing authorizations of all branches of government of this state."[35] The courts have generally described SEPA as "overlaying" the requirements which existed prior to its adoption[36] and have affirmed that SEPA must be enforced even where a particular use is allowed by local law or policy.[37] The courts have also upheld the flexibility of SEPA as a discretionary tool that weighs various environmental policies on a case-by-case basis, noting that the results of its application are not required to be certain or predictable.[38]

Local Transportation Act and Transportation Benefit Districts

In 1988, the Local Transportation Act (LTA) provided another means of collecting funds from new development to pay for transportation infrastructure. It allowed local governments to singly or jointly impose impact fees to fund a portion of the off-site transportation improvements needed as a result of economic development and growth.[39] In the LTA, the legislature also directed the state to "encourage and give priority to the state funding of local and regional transportation improvements that are funded in part by local, public, and private funds."[40]

OFF-SITE TRANSPORTATION IMPROVEMENTS means those transportation capital improvements designated in the local plan adopted under this chapter that are authorized to be undertaken by local government and that serve the development needs of more than one development.

RCW 36.73.015(3)

State law requires local governments adopting LTA programs to define the geographic boundaries of the area generally benefited by the off-site transportation improvements it proposes to fund through impact fees. The proposed improvements must be based on adopted comprehensive, long-term transportation plans supported by six-year capital funding programs that are updated annually.[41]

The transportation impacts for which LTA fees are collected must be measured as a pro-rata share of the capacity of the off-site transportation improvements being funded under the program.[42] In addition, the impact fees:

32. *Cougar Mountain Associates v. King County,* 53841-7, Supreme Court of Washington (December 15, 1988).
33. *Nagatani Brothers, Inc. v. Skagit County Board of Commissioners and Skagit County,* 53471-3 Supreme Court of Washington (July 16, 1987) and *Benjamin Levine v. Jefferson County,* 57059-I, Supreme Court of Washington (March 28, 1991).
34. *Lowell Cook v. Clallam County, et al.,* 3733-II, Court of Appeals of Washington, Division Two (October 9, 1980) and *Victoria Tower Partnership v. The City of Seattle,* 25459-6-I, Court of Appeals of Washington, Division One (November 13, 1990).
35. *The Polygon Corporation v. The City of Seattle, et al.*, 44536, Supreme Court of Washington (May 18, 1978).
36. *Id.*
37. WAC 197-11-198
38. *West Main Associates, et al. v. The City of Bellevue, et al.*, 19735-5-I, Court of Appeals of Washington, Division One (September 28, 1987).
39. RCW 39.92.010
40. *Id.*
41. RCW 39.92.030
42. RCW 39.92.030

- must be reasonably necessary as a direct result of the proposed development,
- must be used in substantial part to pay for the mitigating improvements within six years or refunded,
- may be pooled and expended on any one of the improvements mitigating the impact of the development,
- must give credit for the developer's participation in public transportation and ride-sharing improvements and services,
- may be imposed for improvements constructed since the commencement of the program including those not yet constructed,
- cannot be collected for any improvements incapable of being reasonably carried out due to lack of public funds or other foreseeable impediments, and
- cannot be imposed on a development when mitigation of the same off-site transportation impact is being required by another agency.[43]

A TRANSPORTATION BENEFIT DISTRICT TRANSPORTATION IMPROVEMENT means a project contained in the transportation plan of the state or a regional transportation planning organization. A project may include investment in new or existing highways of statewide significance, principal arterials of regional significance, high-capacity transportation, public transportation, and other transportation projects and programs of regional or statewide significance including transportation demand management. Projects may also include the operation, preservation, and maintenance of these facilities or programs.

RCW 36.73.015(3)

In 2005, the legislature extended the ability of local governments to impose transportation impact fees by allowing them to form Transportation Benefit Districts within one or more jurisdictions by popular vote. In addition to being an independent taxing authority, Transportation Benefit Districts can assess Local Transportation Act impact fees.[44] The fees must be used for transportation improvements constructed by the District that are identified in State or Regional Transportation Planning Organization plans and necessitated by existing or reasonably foreseeable congestion levels. A 2006 amendment removed the limitation that not more than 40% of the generated revenues be expended on city streets, county roads, existing highways other than highways of statewide significance, and the creation of new highways that intersect with a highway of statewide significance.[45] Developments of less than 20 residences must be exempted from the fees.[46] King, Pierce and Snohomish counties and the cities within them are not eligible to form Transportation Benefit Districts.[47] Instead, these counties are authorized to jointly establish a Regional Transportation Investment District through legislation and a popular vote.[48] While this entity could levy taxes, some types of fees, and tolls, it is not authorized to impose impact fees.[49]

Growth Management Act Impact Fees

The 1990 Growth Management Act allowed local governments fully planning under the GMA to collect impact fees to help them achieve the concurrency goal. GMA impact fees are payments required as a condition of development approval to pay for the public facilities needed to serve the development. Publicly owned or operated capital facilities including: streets and roads, school facilities, some fire protection facilities, and parks, open space, and recreational facilities are eligible to be financed in part by impact fees.

43. RCW 39.92.030-040
44. RCW 36.73.120
45. 2871-S.SL
46. RCW 36.73.040(3)(c)
47. RCW 36.73.020(6)
48. RCW 36.120
49. RCW 36.120.050

Local governments can impose impact fees on applicants seeking permission for construction, expansion, or land use changes that create additional demand for public facilities.[50] The legislature did not allow local governments to fully recover the cost of system improvements from new development. Instead, impact fees must be balanced by other sources of public funds. The legislature also specified impact fees can only be imposed for the proportionate share of the costs of system improvements reasonably related to and reasonably beneficial to the new development.[51]

GMA IMPACT FEES: Counties, cities, and towns that are required or choose to plan under RCW 36.70A.040 are authorized to impose impact fees on development activity as part of the financing for public facilities, provided that the financing for system improvements to serve new development must provide for a balance between impact fees and other sources of public funds and cannot rely solely on impact fees.

RCW 82.02.050(2)

GMA impact fees differ significantly from previously existing funding mechanisms to address development impacts. Unlike mitigation payments under the State Environmental Policy Act or transportation impact fees assessed under the Local Transportation Act, GMA impact fees are not required to be calculated "by making individualized assessments of the new development's direct impact on each improvement planned in a service area."[52] So instead of being limited to collecting funds for project improvements planned and designed to provide service for a particular development project,[53] local governments can assess fees for area-wide system improvements within the community at large.[54]

To prevent the imposition of arbitrary or duplicative fees, state statute requires local governments to establish procedures and criteria for their impact fee programs.[55] A framework for these procedures is provided within the statute. First, local governments must adopt capital facilities plans identifying:

- public facility deficiencies and addressing how they will be resolved,
- additional demands placed on existing public facilities by new development, and
- additional public facility improvements required to serve new development.[56]

Next, the city or county must adopt an ordinance defining an impact fee schedule based on a formula or some other method of calculation determining the proportionate share of the cost of public facility improvements. The impact fee ordinance must also:

- provide credits for developer dedications and improvements,
- allow for adjustments based on special circumstances,
- consider data submitted by the developer to adjust the fee amount,
- differentiate fee assessments based on established service areas and land use categories,[57] and
- provide for an administrative appeals process.[58]

50. RCW 82.02.090(1)
51 RCW 82.02.050(3)
52 *The City of Olympia v. John Drebick et al.,* 75270-2, Supreme Court of Washington (January 19, 2006).
53 RCW 82.02.090(6)
54 RCW 82.02.090(9)
55 RCW 82.02.050(1)(c)
56 RCW 82.02.050(4)
57 RCW 82.02.060
58 RCW 82.02.070

The statute allows local governments to exempt development activities with broad public purposes if the city or county pays the development's proportionate share from public funds not collected as impact fees.[59] Local governments can also assess impact fees to reimburse previously incurred system improvement costs to the extent that new growth and development will be served by the previously constructed improvements. However, under no circumstances can impact fees be used to make up for system deficiencies.[60]

Impact fees are typically calculated and imposed when a developer submits an application for a building permit, which is when a proposed project begins to affect a local government's public facilities.[61] Once collected, impact fees must be specifically earmarked, retained in special interest-bearing accounts and expended or encumbered for projects listed in the capital facilities plan within six years.[62] If a city or county fails to expend or encumber the impact fees within the six-year time frame, the owner of the property is entitled to a refund.[63] A developer may also request and receive a refund, including interest earned on the impact fees, if the development activity does not proceed and no impact has resulted.[64]

Comparison of Different Tools for Mitigating Development Impacts

	Land Dedication & Voluntary Agreements	SEPA Substantive Authority	Growth Management Act (GMA) Impact Fees	Local Transportation Act (LTA) Impact Fees	Transportation Benefit Districts (TBD)
Exemptions	None	For statutory, infill, emergencies, minor construction, and minor land use decisions	Cannot be used by jurisdictions not fully planning under GMA	None	Developments of less than 20 residences are exempt
Type of Impact	Direct	Direct	Off-Site	Off-Site	Off-Site
Potential for State Highway Mitigation?	Yes	Yes	No	Yes	Yes
Mitigation Limitations	Must be reasonably necessary as a direct result of development Cannot result in a taking (Nollan/Dolan test required)	Must be related in purpose and extent to specific adverse impacts Must be reasonable and capable of being accomplished Intended to address gaps and overlaps	Can only be imposed for statutorily defined public facilities Can only be imposed for the proportionate share of the costs of improvements that are reasonably related to and reasonably beneficial to the new development Must be balanced by other public funds	Can only be used for major or minor arterials and intersection improvements designated in a local plan and undertaken by the local government Must be reasonably necessary as a direct results of the proposed development	All LTA limitations apply Can only be used for projects constructed by the TBD that are identified in State or RTPO plans Must be approved by popular vote Other impact fees paid by the development must be credited
Expenditure Restrictions	Must be expended within 5 years or refunded with interest	None	Must be expended or encumbered on projects in capital facilities plan within 6 years of collection	Must be expended or refunded within 5 years of collection	Must be expended or refunded within 6 years of collection

59 RCW 82.02.060(2)
60. RCW 82.02.020
61. *Dennis Pavlina and Gold Medal Group, LLC v. City of Vancouver, Washington,* 30829-1-II, Court of Appeals of Washington, Division Two (July 13, 2004).
62. *Henderson Homes Inc., et al. v. The City of Bothell*, 59696-4, Supreme Court of Washington (July 21, 1994), *Trimen Development Company v. King County*, 59452-0, Supreme Court of Washington (July 21, 1994), and *Vintage Construction Company v. The City of Bothell,* 64773-9, Supreme Court of Washington (July 30, 1998).
63. RCW 82.02.080(1)
64. RCW 82.02.080(3)

The growth management hearings boards have held they do not have jurisdiction to hear appeals of GMA impact fees.[65] Instead, the Washington Land Use Petition Act (LUPA)[66] provides the basis for judicial review of GMA impact fees, which are considered land use decisions.[67] In order to have standing to bring a land use petition under LUPA, the petitioner must have exhausted his or her administrative remedies to the extent required by law.[68] Land use petitions must be filed in superior court within 21 days of the issuance of the land use decision.[69]

Impact fees are exclusively tools of local governments fully planning under the GMA for development within their boundaries. The Court of Appeals has ruled that cities cannot assess impact fees on developments outside their municipal boundaries but within their urban growth boundaries. The court stated an "impact fee must be imposed by an entity with authority to approve or disapprove a change in the use of land on which the project will be built."[70] Also, impact fees do not have to be consistent across jurisdictions.[71]

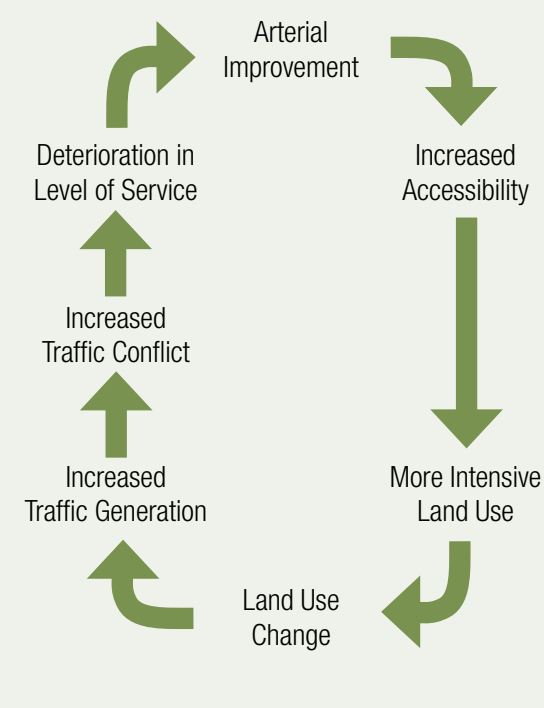
Access Control

Access is the ability to enter or leave a public street or highway from an abutting property or another public street or highway.[72] Washington manages vehicular access on state-owned highways to:

- increase the highway's capacity,
- reduce traffic accidents,
- mitigate environmental degradation,
- promote sound economic growth and the growth management goals of the state,
- reduce highway maintenance costs and the necessity for costly traffic operations measures,
- lengthen the effective life of the state's transportation facilities thus preserving the public investment in such facilities, and
- shorten response time for emergency vehicles.[73]

Improvements to state highways often result in more intensive land uses. While growth and development are usually good for the local economy, they often result in too many access points located too close together. This increases the likelihood of traffic congestion which reduces the level of service on the state highway. Reduced levels of service may then lead to demand for additional transportation system improvements. Access management

The Transportation Infrastructure-Land Use Cycle



65. *Robinson et al. v. City of Bainbridge Island, et al.*, 94-3-0025, CPSGMHB (February 24, 1995) and *Properties Four, Inc. v. City of Olympia,* 95-2-0069, WWGMHB (August 1995).
66. RCW 36.70C
67. *James T. James, et al. v. County of Kitsap, et al.*, 73747-9, Supreme Court of Washington (July 7, 2005).
68. RCW 36.70C.060(2)(d)
69. RCW 36.70C.040(3)
70. *David Nolte, et al. v. The City of Olympia,* 23756-3-II, Court of Appeals of Washington, Division Two (August 20, 1999).
71. *Wellington River Hollow, LLC v. King County et al.*, 47976-8-I, Court of Appeals of Washington, Division One (September 23, 2002).
72. "Regulating Access to Washington State Highways." WSDOT, 2006.
73. RCW 47.50.010(1)(c)

ACCESS CONTROL....

- » Reduces crashes as much as 50%
- » Increases roadway capacity by 23% to 45%
- » Reduces travel time and delay as much as 40% to 60%
- » Provides increased safety for all transportation system users

Access Regulation- A Balancing Act Between Access & Mobility. WSDOT. 2005.

tempers this cycle by managing the traffic movements onto and off of the state system in order to minimize conflict and increase traffic flow. This contributes to the longevity of the highway by preserving its capacity.

Typical access management techniques include:

- access spacing including spacing between signalized intersections and between driveways,
- turning lanes including dedicated left and right turn lanes, indirect left and right turns, and roundabouts,
- median treatments including two-way left turn lanes and raised medians

In Washington, state highways are classified as either limited access or managed access. The basic policy for limited access highways was established in 1951 in response to the congestion, peril, and slowing of traffic which resulted from unrestricted access.[74] Limited access rights must be obtained through the acquisition of access property rights from abutting property owners. Access rights may be acquired by gift, purchase, or condemnation.[75] There are three levels of control for limited access. The most restrictive is full limited access where access is permitted only through interchanges at select roads, rest areas, viewpoints, or weigh stations and all crossing and private approaches at grade are prohibited.[76] The least restrictive is modified limited access which allows at-grade intersections for select public roads and existing driveway approaches as well as some limited commercial approaches. However, no direct access is allowed if alternate public road access is available. Partial limited access control allows at-grade intersections and some driveways, but not for commercial uses.

Bridgeport Way in Tacoma after WSDOT access management project.

Access to Interstate Routes, which are full limited access control, must be approved by the Federal Highway Administration. Access to other limited access state routes must be approved by WSDOT; including access requests on highways segments within incorporated cities.

The second type of access regulation, managed access, was enacted in 1991 to address the portion of the state transportation system that was not limited access.[77] The legislation was intended to "control the proliferation of connections and other access approaches to and from the state highway system."[78] Managed access regulation is based upon the premise that the access rights of an owner of property abutting the state highway system are subordinate to the public's right and interest in a safe and efficient highway system. Additionally, an abutting property owner has a right to reasonable access to a state highway, but may not have the right of a particular means of access.[79] Therefore, access may be restricted if reasonable access can be provided to another public road which abuts the property.

SR 270 - Pullman to Idaho State Line. WSDOT plans to widen SR 270 from two lanes to four with a 14-foot wide median lane.

There are five levels of control for managed access highways with Class 1 being the most restrictive and Class 5 being the least restrictive. All connections in existence prior to July 1, 1990 are grandfathered in for managed access routes, as

74. RCW 47.52.001
75. RCW 47.52.050
76. RCW 47.52.070
77. RCW 47.50.010(2)
78. RCW 47.50.010(1)(b)
79. RCW 47.50.010(3)

long as there are no significant changes in use, design or traffic flow.[80] Managed-access highways in unincorporated areas require a state-issued access permit. However, cities are the permitting authority for managed access routes within their boundaries. City permitting standards must meet or exceed WSDOT's standards.[81]

Like mitigation and impact fee provisions, access control laws help protect the existing transportation system from being degraded by new development. Access control is a particularly important tool for the state because, with the exception of managed access highways within corporate boundaries, the state can use it to directly mitigate development impacts.

80. RCW 47.50.080(1)
81 RCW 47.50.030(3)